

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DATE: AUG 8 1975

REPLY TO
ATTN OF: ISD

SUBJECT: Implementation of the Privacy Act of 1974

. Agency Privacy Liaison Representatives

Attached for your information are several documents which may be helpful to your efforts to implement the Privacy Act of 1974.

- ° Two recent opinions rendered by the Department of Justice on the relationship of the Privacy Act to the Freedom of Information Act and several other statutes.
- ° A series of documents pertaining to implementation of the Privacy Act by OMB.

Wally Haase
Walter W. Haase

Attachments

*Including their
proposed rules*

Department of Justice
Washington, D.C. 20530

JUL 16 1975

Mr. Robert P. Bedell
Assistant General Counsel
Office of Management and Budget
Washington, D. C. 20503

Dear Bob:

This is in response to your request for informal views concerning the relationship of the confidentiality provisions of the Railroad Retirement Act to the Privacy Act of 1974.

impose Recognizing the impossibility of reconciling the Privacy Act of 1974 with any other law, we offer the following observations.

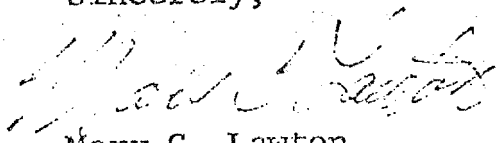
The access provisions of the Privacy Act, 5 USC 552a(d) deal with an individual's access to records concerning himself. The Act expresses little concern for the privacy of third party sources of information. The relevant provisions of the Railroad Retirement laws, on the other hand, deal with the confidentiality of certain types of information - regardless of who seeks it. The Privacy Act is later in time and more specific as to the individual access. The Railroad Retirement laws, while earlier in time, deal more specifically with certain information but not with individual access to medical information.

Under the circumstances, the normal rules of statutory construction are of little help: (1) The Privacy Act as later in time prevails; (2) repeals of earlier acts by implication are not favored and the Railroad Retirement laws prevail; (3) dealing with individual access, the Privacy Act is more specific and therefore prevails; (4) dealing with only Railroad Retirement records and being more specific, those laws prevail. It is a typical Privacy Act problem.

Assuming the law to be insoluble, I would suggest that the safer course is to follow the Privacy Act while taking full advantage of 5 USC 552a(f)(3). It may serve the same purpose as the Railroad Retirement law (45 USC 362) and is less likely to produce litigation.

I wish the Railroad Retirement Board good luck in any case.

Sincerely,



Mary G. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel

Meade Whitaker, Esq.
Chief Counsel
Internal Revenue Service
Washington, D.C. 20224

JUL 30 1975

Dear Mr. Whitaker:

This is the rule.
In a letter dated April 14, 1975, Harold T. Flanagan, Director of your Disclosure Division, requested our views as to whether the Privacy Act of 1974, P.L. 93-579, is the exclusive avenue available to an individual who seeks government records about himself, or whether the Freedom of Information Act would also be available for this purpose.

Neither the literal language of the two Acts nor their legislative histories provide a clear answer to this question. The Freedom of Information Act provides that government records are available to "any person" who requests them unless they fit into one of nine exempt categories, in which case the agency may, but need not, refuse disclosure. The Privacy Act authorizes "an individual" to request records pertaining to himself and seek correction of those records, subject to two general and seven specific exemptions. The Freedom of Information Act, having been passed and amended first, makes no reference to the Privacy Act. The Privacy Act makes only two direct references to the Freedom of Information Act. New section 5 U.S.C. 552a(b)(2) permits disclosure of records about an individual without his prior consent if disclosure would be required by the Freedom of Information Act. Subsection (q) of the same section specifies that an agency may not use a Freedom of Information Act exemption to deny an individual access to files about him that would be available under the Privacy Act. No mention is made of the possibility that an individual might seek records under both Acts.

It should be noted that an earlier version of the privacy bills did address this question. Section 205(b) of H.R. 16373, as it passed the Senate on November 22, 1974, specified:

Nothing in this Act shall be construed to permit the withholding of any personal information which is otherwise required to be disclosed by law or any regulation thereunder.

This language would have assured that information available under the Freedom of Information Act would continue to be available, to the individual as well as to third parties, despite any broader exemption in the Privacy Act. The omission of this language from the final enactment suggests that Congress ultimately decided that the Privacy Act exemptions should govern exclusively, although the omission is not explained in the legislative history of the version that finally passed.

Since no clear reason is given for the omission of this language in the legislative history, it might be argued that the two Acts were nevertheless intended to provide alternate or duplicate remedies for an individual who seeks access to records about himself. In our view, however, a reading of the two Acts as a whole and consideration of their practical application leads to a contrary conclusion, namely, that the Privacy Act is the exclusive remedy for an individual who seeks records about himself contained in a system of records covered by the Privacy Act.

Alternative Application

There would be no difficulty in harmonizing application of the two Acts to the same request if the effect of the Privacy Act were merely to expand access which the FOI Act already provides. Then one might reasonably assert that a requester was free to proceed under the older legislation -- but could obtain still more by proceeding under the newer. It is true that in most respects the Privacy Act expands access by the person seeking his own records; but in several significant respects, the Privacy Act also permits or requires

limitations upon access, beyond what the FOI Act would authorize. For example, under the FOI Act an Agency could provide personal files to a person claiming to be their subject without requiring him to produce solid proof of his identity; subsection (f)(2) of the Privacy Act, however, authorizes the establishment of verification procedures. Similarly, under the FOI Act an agency would not be able to withhold medical information from its subject merely because it determined that disclosure would be harmful to him; whereas subsection (f)(3) of the Privacy Act permits an agency to restrict certain disclosures to the requesting subject's physician rather than making them to the subject himself. Finally, mention might be made of the Privacy Act's prohibition on access to information compiled in anticipation of a civil proceeding. Subsection (d)(5). It is entirely implausible that such substantial protections as these were intended only to apply to the incremental access which the Privacy Act provides beyond that of the FOI Act -- so that they could be entirely avoided if the FOI Act alone were the basis of the request. It seems clear that they were enacted as desirable provisions in and of themselves, rather than as mere limitations upon the relatively small broadening of access achieved by the Privacy Act. If they are to be given such independent effect, they must be held applicable to all requests by file subjects and not just those citing the Privacy Act rather than the FOI Act.

Another substantial obstacle to the theory that the FOI Act and the Privacy Act afford alternative forms of procedures is the fact that neither Act requires the requester to identify the statutory provisions under which his request is made -- and in fact many (if not most) current FOI requests do not contain such identification. Without specification, it would be impossible to determine which Act a particular request relied upon; and it is utterly implausible that Congress intended substantial effects to attach not merely to a Code citation, but to an executive or judicial surmise concerning which citation the requester would have used if he had used one.

Concurrent Application

Of course the foregoing objections could be overcome if the Privacy Act were to be considered not merely an alternative

to the FOI Act but a supplement to it -- that is, if both the FOI Act and the Privacy Act were to be considered applicable simultaneously to all requests by file subjects. Other provisions make it clear, however, that the two acts simply cannot be read entirely together.

For example, the Privacy Act, while prescribing time limits for the correction of records, prescribes no limits on the agency decision to grant or deny access to records. The FOI Act, on the other hand, sets rigid limits on the decision to grant or deny access. 1/ Furthermore, the FOI Act provides that no exhaustion of administrative remedies is required if its time limits are not met; the Privacy Act, being silent on the subject, presumably requires exhaustion of administrative remedies. 2/ The FOI Act requires notice, upon denial of access to records, that the individual may appeal that decision within the agency. The Privacy Act requires neither the internal appeal itself nor any notice of further rights after denial. 3/ A party denied records under the FOI Act may obtain injunctive relief and costs and attorneys fees; no specific statute of limitations is provided. Similar relief is available under the Privacy Act but there is a two-year statute of limitations. 4/

Of course one might maintain that the two Acts were meant to be cumulative where not inconsistent, but where inconsistent the provisions of the later Act would prevail. Such an interpretation is cast into doubt by subsection (q) of the Privacy Act which specifically states that the FOI Act exemptions from disclosure cannot be used to deny an individual access to files about himself. There would be no need for

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- 1/ Compare 5 U.S.C. 552a(d)(1) with 5 U.S.C. 552(a)(6).
- 2/ Compare 5 U.S.C. 552(a)(6)(C) with 5 U.S.C. 552a(d)(1).
- 3/ Compare 5 U.S.C. 552(a)(6)(A)(i) with 5 U.S.C. 552a(d)(1).
- 4/ Compare 5 U.S.C. 552(a)(4) with 5 U.S.C. 552a(g)(5).

such a provision if all inconsistencies between the two acts were to be resolved in favor of the later. 5/

Attempting to read the two acts as cumulative, at least in part, creates a scheme of enormous complexity. If they are to be read as complementary, except where inconsistent, it becomes necessary to determine when that inconsistency exists. For example, is the Privacy Act provision permitting special disclosure restrictions on medical records -- limiting disclosure to a physician -- consistent with the FOI provision on disclosure? Does 5 U.S.C. 552a(q) mean not only that the (b)(5) exemption of FOI cannot be used as a basis for denying records but also that the (b)(3) exemption for statutory restrictions on disclosure is unavailable? 6/ Does the fact that the Privacy Act does not require an administrative appeal from a denial of access overrule the FOI requirement that such an appeal be provided and notice of its availability be given the requester? Reading the acts cumulatively, when would the administrative remedies be exhausted for purposes of seeking judicial review? If records are provided to the individual, what fees may be charged? 7/

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- 5/ Of course, the provision is also somewhat superfluous under the theory that the Privacy Act is exclusive, but it seems to be less so. If an intricate system were being established, whereby some provisions of the later Act would supersede those of the earlier, but others would not, one would expect more than a single expression of the practical operation of such supersedure. Assuming, however, that the entire Privacy Act was regarded as exclusive, subsection (q) can be seen as a somewhat superfluous but understandable affirmation of exclusivity in a particularly important area.
- 6/ Under the Veterans Administration Statute, 38 U.S.C. 3301(1) records are not available to the veteran, if disclosure would be injurious to his physical or mental health. Under FOI, such records would be exempt from disclosure under 5 U.S.C. 552(b)(3) -- records exempt by statute. What is their availability under Privacy Act?
- 7/ The FOI Act permits fees to be charged for the costs of both search and duplication. 5 U.S.C. 552(a)(4). Under the Privacy Act only duplication fees "excluding search" may be charged. 552a(f)(5).

Courts and administrators should not be cast upon this sea of uncertainty without a clear expression of congressional intent to that effect. That does not exist in the present case. To the contrary, in our view the Privacy Act bears every evidence of having been regarded as a self-contained unit, embodying all requirements that Congress intended, from definitions to provisions of judicial review. It is, in our view, intended to be exclusively applicable to all cases in which an individual requests records from a system of records covered by the Privacy Act, after the date on which it comes into effect.

Sincerely,

Mary C. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel



EXECUTIVE OFFICE OF THE PRESIDENT

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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 7, 1975

MEMORANDUM FOR ASSISTANT DIRECTORS, ASSOCIATE DIRECTORS AND
DEPUTY ASSOCIATE DIRECTORS

SUBJECT: Privacy Act of 1974

As a result of the provisions of the Privacy Act of 1974, certain changes must be made in the maintenance of information on individuals within the Divisions and Offices of OMB. The net effect of these changes is to place certain prohibitions on the type of records maintained by the Divisions and offices in order to comply with those sections of the Act dealing with safeguards, unauthorized disclosure, routine uses, etc. In order to secure the information contained in these records it will be necessary after September 27, 1975 to contact the offices listed below. Requests to access these records will be handled in accordance with the Office's rules and regulations on individual privacy. The procedure for records disposition are as follows:

1. Send to the Personnel Office:

a. Resume's, SF 171's, etc. on applicants for employment with OMB.

b. Files on employees containing such material as copies of employee evaluations, SF 50's, SF 52's, memoranda, etc.

c. Employee Record Cards SF 7B.

d. copies of evaluations of former employees.

e. copies of training request for employees.

2. Send to the Budget and Management Office:

a. all copies of the time and attendance cards

b. copies of travel Requests, vouchers, or give to each employee.

c. Any other records dealing with travel, payroll, leave, etc. that contain information pertaining to an individual.

3. Send to the Security Officer all notices of security clearances or determinations, including OMB Form #5.

4. Send to Records Officer all copies of the OMB Staff Roster.

The records listed above represent those identified by the Records Unit during its recent survey. It is possible, however, that there are a number of records on individuals being maintained that were not identified by the Records Unit. Division officials should be cautioned that the maintenance of such records may result in civil and criminal penalties.

August 7, 1975

OFFICE OF MANAGEMENT AND BUDGET

TO OFFICE OF MANAGEMENT AND BUDGET STAFF

SUBJECT: Restrictions on use of computers for processing personal data

The Privacy Act of 1974 (P.L. 93-579, 5 U.S.C. 552a) establishes a number of requirements governing Federal agency personal record-keeping practices. This memorandum establishes policies and responsibilities for implementing the requirements of the Act in regard to:

- ° maintenance of personal data by OMB staff on the OMB computer, other agency computers or commercial computer time-sharing services, and
- ° use of the OMB computer for personal data by other agencies.

Except as otherwise noted, the provisions of this memorandum are effective September 27, 1975.

1. OMB personnel shall not maintain any individually identifiable data on any computer unless
 - a. a positive determination has been made that the system of records is not subject to the provisions of the Act, or
 - b. a system notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published in the Federal Register, and "appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which would result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained" (5 U.S.C. 552a(e)(1)) have been established.

Written justification to substantiate a determination that a system of records is not subject to the Act shall be developed by the office or division responsible for the system of records and submitted to the Assistant to the Director for Administration for review, coordination and approval.

System notices consistent with the provisions of 5 U.S.C. 552a(e)(4) shall be prepared and coordinated in accordance with procedures established by the Assistant to the Director for Administration.

The office or division responsible for maintaining the system of records shall be responsible for developing and documenting requirements for safeguarding data consistent with the provisions of 5 U.S.C. 552a(e) in coordination with the Assistant to the Director for Administration and the Deputy Associate Director for Information Systems.

2. The OMB computer shall not be used for processing any individually identifiable data for other agencies unless the using agency has
 - a. provided certification that the system of records is not subject to the Act,
 - b. provided evidence that it has published all rules, notices and otherwise met all requirements of the Privacy Act, and
 - c. the data safeguard requirements to be met by the OMB computer center have been documented and concurred in by the Deputy Associate Director for Information Systems.
3. Minimum standards for maintaining any individually identifiable data on the OMB computer and rules of conduct for persons involved in the design, development, operation or maintenance of personal data systems on the OMB computer shall be established by the Deputy Associate Director for Information Systems by August 31, 1975.
4. All interagency computer sharing agreements to which OMB is a party and all contracts for computer services shall include privacy safeguard provisions concurred in by the Assistant to the Director for Administration, the General Counsel and the Deputy Associate Director for Information Systems. All current agreements or contracts shall be amended to provide such provisions prior to September 27, 1975.
5. The Deputy Associate Director for Information Systems shall take necessary steps to remove all data files from the OMB computer which do not meet the policies and criteria established herein by September 27, 1975.

OMB PROPOSED RULES FOR IMPLEMENTING THE ACT

Notice is hereby given that the Office of Management and Budget (sometimes hereinafter referred to as OMB) is considering promulgating Chapter III, Part 1302 of Title 5, Code of Federal Regulations. The proposed regulations implement the provisions of section 5 U.S.C. 552a(f), Public Law 93-579 of December 31, 1974 (the Privacy Act of 1974) (88 Stat. 1896).

Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed rules to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503. All relevant material received before September 12, 1975 will be considered. All written comments received will be available, upon request, for public inspection at the above address only between the hours of 9:00 a.m. and 5:30 p.m. Monday through Friday (excluding legal Federal holidays), during the 30-day period described above, and for 10 days thereafter.

Section 1302 is proposed as follows:

1302.1. Rules for determining if an individual is the subject of a record. Individuals desiring to know if a specific system of records maintained by the Office of Management and Budget contains a record pertaining to them should address their inquiries to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503. The written inquiry should contain a specific reference to the system of records maintained by OMB listed in the OMB Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of OMB systems of records subject to the Privacy Act will be made in the Federal Register and copies of the notices will be available upon request to the Assistant to the Director for Administration when so published. A compilation of such notices will also be made and published by the Office of Federal Register, in accordance with section 5 U.S.C. 552a(f).

At a minimum, the request should also contain sufficient identifying information to allow OMB to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, OMB reserves the right to solicit from the requester additional identifying information.

Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

Whenever a response cannot be made within the 10 days, the Assistant to the Director for Administration will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

1302.2. Requests for Access.

a. Requirement for written requests. Individuals desiring to gain access to a record pertaining to them in a system of records maintained by OMB must submit their request in writing in accordance with the procedures set forth in paragraph b, below. Due to security measures in effect in both the Old and New Executive Office Buildings, requests made in person (walk-ins) cannot be accepted, except that individuals who are employed by the Office of Management and Budget may make their request on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9:00 a.m. and 5:30 p.m. Such requests for access by individuals employed by OMB need not be made in writing.

b. Procedures.

(1) Content of the Request. The request for access to a record in a system of records shall be addressed to the Assistant to the Director for Administration, at the address cited above, and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the requester maintained by OMB in a system of records, the request will be presumed to be made under the Privacy Act of 1974. The request should contain necessary information to verify the identity of the requester (see paragraph b(2)(f), below). In addition, the requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by the OMB Notice of Systems of Records.

If the request for access follows a prior request under section 1302.1, above, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the OMB response to that request is attached.

If the individual specifically desires a copy of the record, the request should so specify. See section 1302.4, below.

(2) OMB action on request. A request for access will ordinarily be answered within 10 days, except when the Assistant to the Director for Administration determines otherwise, in which case the requester will be informed of the reason for the delay and an estimated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(a) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by OMB;

(b) a statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternative arrangements may be made with the official specified in 2b(1) above;

(c) a statement, when appropriate, that examination in person will be the sole means of granting access only when the Assistant to the Director for Administration has determined that it would not unduly impede the requester's right of access.

(d) the amount of fees charged, if any (see section 1302.4 and 1302.7 below) (Fees are applicable only to requests for copies.);

(e) the name, title, and telephone number of the OMB official having operational control over the record; and

(f) the documentation required by OMB to verify the identity of the requester. At a minimum, OMB's verification standards include the following:

(1) Current or former OMB Employees. Current or former OMB employees requesting access to a record pertaining to them in a system of records maintained by OMB may, in addition to the other requirements of this

section, and at the sole discretion of the official having operational control over the record, have his or her identify verified by visual observation. If the current or former OMB employee cannot be so identified by the official having operational control over the records, identification documentation will be required. Employee identification cards, annuitant identification, driver licenses, or the "employee copy" of any official personnel document in the record are examples of acceptable identification validation.

(2) Other than current or former OMB employees. Individuals other than current or former OMB employees requesting access to a record pertaining to them in a system of records maintained by OMB must produce identification documentation of the type described in 2(f)(1), above, prior to being granted access. The extent of the identification documentation required will depend on the type of record to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements will be specified in the system notices published pursuant to 5 U.S.C. 552a(e)(4).

(3) Access granted by mail. For records to be accessed by mail, the Assistant to the Director for Administration shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the requester of information required to be made available to the public by 5 U.S.C. 552. When, in the opinion of the Assistant to the Director for Administration, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(4) Unavailability of identification documentation. If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to \$5,000. In addition, depending upon the sensitivity of the records sought to be accessed, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate, e.g.,

statements of other individuals who can attest to the identity of the requester.

(5) Access by the parent of a minor, or legal guardian. A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by OMB in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(6) Granting access when accompanied by another individual. When an individual requesting access to his or her record in a system of records maintained by OMB wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(7) Denial of access for inadequate identification documentation. If the official having operation control over the records in a system of records maintained by OMB determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Assistant to the Director for Administration prior to finally denying the individual access.

(g) Medical records. The records in a system of records which are medical records shall be disclosed to the individual to whom they pertain in such manner and following such procedures as the Assistant to the Director for Administration shall direct. When OMB, in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, OMB may transmit such information to a physician named by the individual.

(h) Exceptions. Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceedings.

1302.3. Access to the accounting of disclosures from records. Rules governing the granting of access to the accounting of disclosures are the same as those for granting

access to the records (including verification of identity) outlined in section 1302.2, above.

1302.4. Requests for copies of records. Rules governing requests for copies of records are the same as those for the granting of access to the records (including verification of identity) outlined in section 1302.2, above. (See also section 1302.7 for rules regarding fees.)

1302.5. Requests to Amend Records.

a. Requirement for written requests. Individuals desiring to amend a record that pertain to them in a system of records maintained by OMB, must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions, however, individuals who believe that such records are inaccurate may bring this to the attention of OMB.

b. Procedures.

(1) (a) The request to amend a record in a system of records shall be addressed to the Assistant to the Director for Administration. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth above, copies of previous correspondence between the requester and OMB will serve in lieu of a separate description of the record.

(b) When the individual's identity has been previously verified pursuant to section 1302.2(2)(f) herein, further verification of identity is not required as long as the communication does not suggest that a need for verification has reappeared. If the individual's identity has not been previously verified, OMB may require identification validation as described in section 1302.2b(2)(f). Individuals desiring assistance in the preparation of a request to amend a record should contact the Assistant to the Director for Administration at the address cited above.

(c) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language

should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit OMB not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(d) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by OMB of personal information merely to permit verification of records, the burden of persuading OMB to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(2) OMB action on the request. To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays, and legal Federal holidays. In the event a decision cannot be made within this time frame, the individual making the request will be informed within 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(a) The decision of the Office of Management and Budget whether to grant in whole, or deny any part of the request to amend the record.

(b) The reasons for the determination for any portion of the request which is denied.

(c) The name and address of the official with whom an appeal of the denial may be lodged.

(d) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(e) A description of the review of the appeal within OMB (see section 1302.6 below).

(f) A description of any other procedures which may be required of the individual in order to process the appeal.

1302.6. Request for review. Individuals wishing to request a review of the decision by OMB with regard to an initial request to amend a record in accordance with the provisions

of section 1302.5 above, should submit the request for review in writing and, to the extent possible, include the information specified in subsection a, below. Individuals desiring assistance in the preparation of their request for review should contact the Assistant to the Director for Administration at the address provided herein.

a. The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from OMB in which the request to amend was denied and also the reasons why the requester believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by section 1302.5 above set forth by OMB in its decision denying the amendment. Appeals filed without a complete statement by the requester setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be understandably set forth. In order to avoid the unnecessary retention of personal information, OMB reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by OMB within 180 days of the mailing by OMB of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the Assistant to the Director for Administration, be treated as an initial request to amend a record.

b. The request for review should be addressed to the Assistant to the Director for Administration.

c. Upon receipt of a request for review, the Assistant to the Director for Administration will convene a review group composed of the Assistant to the Director for Administration, the General Counsel, or their designees, and the official having operational control over the record. This group will review the basis for the requested review and will develop a recommended course of action to the Office's Committee on Freedom of Information and Privacy (hereinafter referred to as the Committee). If at any time additional information is required from the requester, the Assistant to the Director for Administration is authorized to acquire it or authorize its acquisition from the requester.

d. The Committee is composed of:

- (1) Deputy Director
- (2) Assistant to the Director for Administration
- (3) General Counsel
- (4) Assistant Director for Budget Review
- (5) Assistant Director for Legislative Reference
- (6) Assistant to the Director for Public Affairs
- (7) Deputy Associate Director for Information Systems
- (8) Deputy Associate Director for Statistical Policy
- (9) Deputy Associate Director for National Security
- (10) Budget and Management Officer
- (11) Personnel Officer

e. The Committee will review the request for review and the recommended course of action and will recommend a decision on the request for review to the Deputy Director, who has the final authority regarding appeals.

f. The Deputy Director will inform the requester in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt by OMB of the individual's request for review unless the Deputy Director extends the 30 day period for good cause. The extension and the reasons therefor will be sent by OMB to the requester within the initial 30 day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with OMB setting forth the individual's reasons for his disagreement with the decision upon the request for review. The Assistant to the Director for Administration has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in

dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, as well as a concise statement by OMB setting forth its reasons for not making the requested changes, if OMB chooses to file such a statement. A copy of the individual's statement, and if it chooses, OMB's statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

1302.7. Schedule of fees.

a. Prohibitions against charging fees. Individuals will not be charged for:

- (1) the search and review of the record,
- (2) any copies of the record produced as a necessary part of the process of making the record available for access, or
- (3) any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

b. Waiver. The Assistant to the Director for Administration may at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.

c. Fee schedule and method of payment. Fees will be charged as provided below except as provided in subsections a and b above.

(1) Duplication of records. Records will be duplicated at a rate of \$.10 per page for all copying of 4 pages or more. There is no charge for duplicating 3 or fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$25.00, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25.00, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to consult with Office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

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(3) Fees must be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503.

(5) A receipt for fees paid will be given upon request.

TRANSMITTAL SLIP		DATE 19 August 1975
TO: Director of Joint Computer Support		
ROOM NO. 2E29	BUILDING Hqs	
REMARKS:		
FROM: [REDACTED] - O-DD/A		
ROOM NO. 7D18	BUILDING Hqs	[REDACTED]
FORM NO. 241 1 FEB 55		
REPLACES FORM 36-8 WHICH MAY BE USED.		
(47)		

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SEC. CL.		ORIGIN	CONTROL NO.
DATE OF DOC	DATE REC'D	[REDACTED]	19 AUG 1975
8 Aug	19 Aug		CROSS REFERENCE OR POINT OF FILING
TO	FROM	SUBJ.	
		IMPLEMENTATION OF THE PRIVACY ACT of 1974	
COURIER NO.	ANSWERED	NO REPLY	
			4

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